

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,
Plaintiff,

v.

ERIC ROBERT RUDOLPH,
Defendant.

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CR-00S-422-S

U.S. DISTRICT COURT
N.D. OF ALABAMA

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**DEFENDANT'S REPLY TO
GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION TO EXTEND TIME
FOR FILING RULE 16(b)(1)(C) SUMMARIES**

COMES NOW defendant, Eric Robert Rudolph, by and through counsel, and replies to the government's response [Doc. 327] to defendant's motion to extend the deadline for filing the Fed. R. Crim. P. 16(b)(1)(C) expert witness summaries [Doc. 307]. Defendant has requested that the deadline be extended from the currently set date of September 7, 2004, to 30 days following full compliance with the defendant's motion for discovery of laboratory bench notes and other items crucial to a fair assessment of the government's scientific evidence. [Doc. 181]

In its response, the government does not oppose the motion to extend time for filing Rule 16(b)(1)(c) summaries. The government assures the Court: (1) "The United States is presently working to determine if the [ASCLD] material from 1998, the relevant time frame, are still in existence" [Doc. 327, p. 3]; (2) "The United States is presently attempting to determine the existence of any relevant documentation outlining any [prior] exposure these agents may have had to EGDN" [Doc. 327, p. 3]; (3) "With respect to other areas of alleged deficiencies in the government's production of bench notes, the government is presently working to address the defendant's requests and will endeavor to determine whether any of the materials sought exist and, if so, provide the requested materials as soon as possible" [Doc. 327, p.3- 4]; and (4) "The

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United States will provide the defendant with a detailed reply regarding the status of production of these materials” [Doc. 327, p. 4].

Based on the government’s non-opposition to defendant’s motion, the government’s concession that it is still working on the defendant’s discovery requests, and for all of the reasons stated in the defendant’s motion, the motion is due to be granted.

The government raises certain points as to its understanding of the scope of discovery it agreed to produce. For instance, the government claims that it never agreed to produce the work papers of non-testifying witnesses. In fact, the defendant’s motion was not restricted to testifying witnesses, but instead requested the government “to disclose laboratory bench notes (work papers), whether handwritten, typed, or electronically recorded, of all experts or technicians who performed any work, analysis, comparison, or testing on any of the evidence in this case.” [Doc. 181, p. 1] The discovery provided indicates that numerous non-testifying technicians and experts performed forensic work on the evidence in this case. At the hearing of the motion on May 18, 2004, as indicated in the magistrate’s order, “the government agree(d) to produce most of the requested material.” (Doc. 225).

In any event, if the government is now claiming that it never agreed to produce the requested material, the appropriate procedure would be for defendant to file a motion before the magistrate requesting production of the material which the government now disavows that it agreed to produce back on May 18, 2004. Such a motion for production will also encompass any additional items that the government refuses to produce after it completes the discovery compliance work that is still in progress. Such a motion may also have to encompass the defendant’s right to have his experts confidentially examine the physical evidence in the government’s possession, a matter the parties are still negotiating, as indicated at the status

conference on September 8, 2004.

The government has promised that it “will provide the defendant with a detailed reply regarding the status of production of [the requested discovery] materials.” [Doc. 327, p. 4) As soon as defendant receives this reply, he will promptly move forward with a motion requesting production of any disputed matter.

Because the requested discovery is critical to the defense experts’ evaluations in this case, and because there are still materials yet to be produced and other matters that may require further discovery litigation, the defense is unable to meet the current Rule 16 deadlines.

CONCLUSION

It is requested that the court amend the Order of June 23, 2004, and extend the time for filing Rule 16 summaries to 30 days following full compliance with the defendant’s motion for discovery of laboratory bench notes and other items crucial to a fair assessment of the government's scientific evidence.

Dated: September 23, 2004

Respectfully Submitted,

Judy Clarke
Bill Bowen
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served upon the following by mailing the same by first class United States mail, properly addressed and postage prepaid, on this 24 day of September, 2004 to:

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Bill Bowen
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